

JS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VAISHALI P. RILEY

Plaintiff

v.

WELLS FARGO BANK, N.A.
Defendant.

CIVIL ACTION

NO. **14 0010**

COMPLAINT

COMES NOW, Vaishali P. Riley, the plaintiff herein, by and through his undersigned attorney, Alan B. Kane, Esquire, states and alleges as follows:

JURY TRIAL

Please take notice that, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the plaintiff hereby demands a jury trial in the above-entitled action.

THE PARTIES

1. Plaintiff, Vaishali Riley, is an adult individual residing at 16919 Cobbler Crossing Drive, Sugar Land, Texas 77498.

2. Defendant, Wells Fargo Bank, N.A., is a corporation with a business address of 280 Second Street Pike, Southampton, PA 18966.

JURISDICTION

3. Jurisdiction of this Court over this action is invoked under Family and Medical Leave Act, as amended, 29 U.S.C. §2601 et seq ("FMLA"). Jurisdiction of this Court over this action is

invoked pursuant to 28 U.S.C. §1331 because the plaintiff has raised federal claims under the FMLA.

4. Venue is properly placed in the United States District Court for the Eastern District of Pennsylvania, since the plaintiff's causes of action arose within the Eastern District of Pennsylvania, and the defendant is located and may be served with process therein.

OPERATIVE FACTS

5. On or about September 17, 2007, the plaintiff started her employment with the defendant and was last employed as a branch manager.

6. The plaintiff was an employee who was eligible for short term medical leave with pay under the defendant's short term leave policy and for short term benefits under the defendant's short term disability coverage.

7. The plaintiff qualified for short term medical leave with pay under the defendant's short term leave policy and for short term benefits under the defendant's short term disability coverage.

8. On or about November 26, 2011, the plaintiff advised the plaintiff's district manager and Human Resources of her medical condition and sought medical leave under the short term medical leave policy of the defendant and the FMLA.

9. The defendant failed to provide the plaintiff with appropriate notification of her individualized rights and obligations under the FMLA.

10. The plaintiff advised the plaintiff's district manager that she had to undergo a surgical procedure and would need medical leave as a result of said surgical procedure.

11. On December 12, 2011, the plaintiff underwent surgery and was prescribed strong pain medication while she recovered from the surgery.

12. The plaintiff advised the defendant that she did expect to be able to return to work approximately January 23, 2012 due to the recovery period of said surgical procedure.

13. Plaintiff's district manager and other corporate representatives of the defendant contacted the plaintiff over eighty three (83) times by text, e-mail and/or by telephone while the plaintiff was out on short term disability and FMLA.

14. While the plaintiff was out of work due to a serious medical condition, the district manager and other corporate representatives of the defendant continuously contacted the plaintiff and requested that she perform work related duties.

15. Furthermore while the plaintiff was out on short term disability and FMLA, the district manager and other corporate representatives of the defendant continuously requested and exerted undue pressure for the plaintiff to return to her full time duties at the bank branch where she was employed despite that the plaintiff had not yet recovered from surgery.

16. On December 1, 2011, the district manager contacted the plaintiff regarding work-related matters.

17. On December 2, 2011, the plaintiff was contacted by the

defendant regarding work-related matters.

18. On December 5, 2011, the district manager contacted the plaintiff regarding work-related matters.

19. On December 6, 2011, the district manager contacted the plaintiff regarding work-related matters.

20. On December 14, 2011, a mere two (2) days after the plaintiff underwent surgery, the district manager called and texted the plaintiff and requested that the plaintiff return to work by December 27, 2011.

21. On December 15, 2011, the plaintiff was contacted by the defendant regarding work-related matters.

22. On December 16, 2011, the district manager contacted the plaintiff regarding work-related matters including meeting monthly goals.

23. On December 22, 2011, the district manager texted the plaintiff and requested that the plaintiff return to work.

24. On December 29, 2011, the district manager texted the plaintiff and requested that the plaintiff return to work.

25. On December 29, 2011, the district manager texted the plaintiff and requested that plaintiff conduct conference calls from her home if she was not returning to the bank branch.

26. On December 30, 2011, the district manager texted the plaintiff and requested that plaintiff contact him regarding work-related matters.

27. As a result of the defendant's undue pressure for the plaintiff to return to her full time duties at the bank branch, the

plaintiff returned to her full time duties at the bank branch on January 3, 2012.

28. During the week of January 3, 2012, the plaintiff was still recovering from her surgery and was still taking strong pain medication. The pain medication made the plaintiff feel incoherent and "out of it".

29. After the plaintiff returned to her full time duties, the district manager demanded that the plaintiff open new bank accounts to meet corporate goals, and threatened to write her up if she did not meet this goal.

30. During the week of January 3, 2012, in order to meet corporate goals and the district manger's demand, the plaintiff opened two (2) checking and two (2) savings accounts in the name of herself and her children.

31. During the week of January 3, 2012, without the plaintiff's authorization, another employee of the defendant (Darshan Patel), opened additional bank accounts under the plaintiff's and/or her children's names to meet corporate goals.

32. Darshan Patel forged the plaintiff's signature to the account documents which enabled him to open additional bank accounts under the plaintiff's and/or her children's names.

33. Darshan Patel took advantage of the fact that the plaintiff was under strong pain medication and the plaintiff would not realize what he had done.

34. If the plaintiff was not unduly pressured by the district manager and other corporate representatives of the defendant to

return to her full time position before the end of FMLA leave, Darshan Patel would not have been able to take advantage of the fact that the plaintiff was under strong pain medication and the plaintiff would have realized what he had done.

34. On November 15, 2012, the defendant terminated plaintiff's employment.

35. The defendant interfered with plaintiff's FMLA leave which led to the plaintiff being terminated.

COUNT I
VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT ("FMLA")
(Interference & Retaliation)

36. The plaintiff incorporates by reference paragraphs 1 through 35 of this complaint, as if fully set forth herein.

37. Pursuant to 29 U.S.C. §2611(4)(A)(i), the Defendant is an "employer" within the meaning of the FMLA.

38. The defendant is engaged in a business that affects interstate commerce and has employed at least fifty (50) or more full-time employees within seventy-five (75) miles of the plaintiff's worksite located at 280 Second Street Pike, Southampton, PA 18966 for each work week during each of the twenty (20) or more calendar workweeks in the current or preceding calendar year.

39. The plaintiff was an eligible employee under the Family and Medical Leave act, 29 U.S.C. §2611(2)(a)(i)(ii).

40. Plaintiff requested leave from the defendant, with which she had been employed for at least twelve (12) months pursuant to

the requirements of 29 U.S.C. §2611(2)(i) during the last twelve months of employment.

41. Further, the plaintiff had at least 1,250 hours of service with the defendant during the previous twelve (12) month period.

42. The plaintiff was entitled to receive leave pursuant to 29 U.S.C. §2612(a)(1), and the defendant was not permitted to interfere with and/or to retaliate against the plaintiff for exercising her rights pursuant to the FMLA.

43. The defendant committed both interference and retaliation violation of the FMLA by (1) interfering with plaintiff's rights when she took leave under the provisions of the FMLA; (2) not allowing the plaintiff to take a qualified leave of absence in accordance with the provisions of the FMLA; (3) not properly giving the plaintiff an appropriate notification of her individualized rights and obligations under the FMLA; (4) by not designing her time off as FMLA time; (5) by terminating the plaintiff in violation of plaintiff's rights under the FMLA; and (5) for other reasons explicitly and/or implicitly set forth in this complaint.

WHEREFORE, the plaintiff prays for judgment in her favor against the defendant as follows:

1. The defendant is to be prohibited from continuing to maintain its illegal policy, practice and/or custom of discriminating/retaliating against employees and are to be Ordered to promulgate an effective policy against such unlawful acts and to adhere thereto;

2. The defendant shall compensate the plaintiff, reimburse the plaintiff and make the plaintiff whole for any and all pay and benefits the plaintiff would have received had it not been for the defendant's illegal actions, including but not limited to past lost earnings, future lost earnings, salary, pay increases, commissions, bonuses, healthcare benefits, disability benefits, and other benefits, training, promotions, pension, retirement, and seniority. Plaintiff should be accorded those benefits illegally withheld from the date she first suffered from the defendant's unlawful conduct until the date of verdict;

3. The plaintiff shall be awarded liquidated and/or punitive damages, as permitted by applicable law(s) alleged asserted herein, in an amount believed by the Court or trier of fact to be appropriate to punish the defendant for its willful, deliberate, malicious and outrageous conduct and to deter the defendant or other employers from engaging in such misconduct in the future;

4. The plaintiff shall be awarded any and all other equitable and legal relief as the court deems just, proper and appropriate including emotional distress.

5. The plaintiff shall be awarded the costs and expense of this action and reasonable legal fees as provided by applicable law;

6. Any verdict in favor of the plaintiff should be molded by the court to maximize the financial recovery available in light of the caps on certain damages set forth in applicable federal law; and

7. Plaintiff's claims are to receive a trial by jury to the extent allowed by applicable law. Plaintiff has also endorsed this demand on the caption of this complaint and hereinabove in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully Submitted,



Dated: January 2, 2014

By: _____

Alan B. Kane, Esquire
Attorney for Plaintiff
Attorney Id. 66379
Suite 608
One Montgomery Plaza
Norristown, PA 19401
Tele: (610) 279-5151
Fax: (610) 277-4870
E-Mail: akaneesqcpa@msn.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Vaishali P. Riley

DEFENDANTS

Wells Fargo Bank, N.A.

14 0010

(b) County of Residence of First Listed Plaintiff Fort Bend County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Bucks County, PA

NOTE: (IN U.S. PLAINTIFF CASES ONLY)
IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Alan B. Kane, Esquire
The Law Office of Alan B. Kane
Suite 608, One Montgomery Plaza
Norristown, PA 19401
(610) 279-5151

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. Section 2611, et al

Brief description of cause:

Violations of the Family and Medical Leave Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ in excess of \$150,000 CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

JAN - 2 2014

DATE SIGNATURE OF ATTORNEY OF RECORD

01/02/2014

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT

14

0010

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 16919 Cobbler Crossing Drive, Sugar land, TX 77498

Address of Defendant: 280 Second Street pike, Southampton, PA 18966

Place of Accident, Incident or Transaction: 280 Second Street Pike, Southampton, PA 18966

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify) Family and Medical Leave Act

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

Alan B. Kane, Esquire, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: January 2, 2014 Alan B. Kane, Esquire

Attorney-at-Law

66379

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

JAN - 2 2014

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: January 2, 2014 Alan B. Kane, Esquire

Attorney-at-Law

66379

Attorney I.D.#

JS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

VAISHALI P. RILEY

v.

WELLS FARGO BANK, N.A.

CIVIL ACTION

14 0010

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

January 2, 2014

Date

Alan B. Kane, Esquire

Attorney-at-law



Attorney for Plaintiff

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FAX Number

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E-Mail Address

JAN - 2 2014